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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re K.W., a Person Coming Under the
Juvenile Court Law.

B258120
(Los Angeles County
Super. Ct. No. CK35404)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

REGGIE S.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Timothy R. Saito, Judge. Affirmed in part and appeal dismissed in part.

Lisa A. Raneri, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

In June 2014, the juvenile court adjudged minor K.W. (born in 2008) a dependent of the court pursuant to an amended petition alleged under Welfare and Institutions Code section 300, subdivision (b) (failure to protect)¹ and removed K.W. from the care of Reggie S. (Father), who was then incarcerated. In his appeal from those rulings, Father contends that substantial evidence did not support the juvenile court's finding that he exposed K.W. to risk of serious physical harm in placing her in the care of paternal grandmother, who had a history of drug abuse but two recent negative drug tests, and from whose care K.W. had been removed when Father was previously incarcerated.

Father also contends that he has standing to challenge the juvenile court's jurisdictional findings under section 300, subdivision (j) against S.W. (Mother) and argues that substantial evidence did not support the findings that Mother had abused or neglected K.W.² Finally, he argues that substantial evidence did not support the dispositional order removing K.W. from Father's care.³

We conclude that the juvenile court's jurisdictional order was supported by substantial evidence and affirm that order. Because on April 28, 2015, the juvenile court returned K.W. to Father's care, Father's appeal of the court's dispositional order is moot, and we dismiss that portion of Father's appeal.

BACKGROUND

The 2014 section 300 petitions

The Department of Children and Family Services (DCFS) filed its petition in this case on February 21, 2014, and filed the operative first amended petition on May 5,

¹ Undesignated statutory references are to the Welfare and Institutions Code.

² Mother is not a party to this appeal.

³ By letter dated April 13, 2015, Father withdrew his contention that the juvenile court failed to state facts supporting its conclusion that no reasonable means existed to protect K.W. without removal from Father.

2014.⁴ As amended and sustained as to K.W., the first amended petition alleged in paragraph b-1 that Father was previously incarcerated and had made an inappropriate plan for K.W.'s care by placing her with paternal grandmother, who Father knew abused illicit drugs. DCFS further alleged that K.W. was a prior dependent of the juvenile court based on Father's making an inappropriate plan for K.W.'s care while he was incarcerated by placing her with paternal grandmother.

As amended and sustained, the first amended petition alleged in paragraph j-2 that on March 3, 2014, Mother left K.W.'s half siblings George G. and Edward G. in the care of an unknown individual. George and Edward were found wandering the streets alone and crossing a busy intersection. Mother could not be located until March 5, 2014, when she was arrested by law enforcement and taken into custody. As amended and sustained, the first amended petition alleged in paragraph j-3 that on March 3, 2014, the home of Mother and the father of George and Edward was filthy and unsanitary, George and Edward were covered with urine and feces, and a large butcher knife and a bottle of bleach were left within George's and Edward's reach.⁵

Prior dependency history

In 1998, 2002, 2003, and 2007, the juvenile court sustained section 300 petitions with respect to Mother's five other children (K.W.'s half siblings) based on Mother's emotional immaturity, sexual abuse of the children by Mother and the minors' respective fathers, physical abuse of the children by relatives, domestic violence, and Mother's mental health issues. Mother failed to reunify with the children, who received permanent placement services.

⁴ Mother's conduct regarding K.W.'s half siblings, George G. and Edward G., was also a subject of the first amended petition. The juvenile court's findings as to K.W.'s half siblings are not before us.

⁵ The section 300, subdivisions (b) and (j) allegations with respect to scarring and gashes on George and Edward, Mother's abuse of illicit drugs and mental and emotional problems, and Mother's history of domestic violence ultimately were dismissed.

In 2004, the juvenile court sustained a section 300 petition with respect to K.W.'s sibling J.S. based on Mother's sexual abuse of a half sibling in 2002. Mother failed to reunify with J.S., who was placed in legal guardianship with paternal aunt Veronica S.

In May 2008, the juvenile court sustained a section 300 petition with respect to K.W. based on Mother's history of drug-related arrests and mental and emotional problems, and Mother's failure to reunify with K.W.'s five older siblings. K.W. was released to Father's care. Father was ordered to attend parenting classes, participate in random drug tests, and cooperate with a family preservation program. Mother was not provided with reunification services. On December 3, 2008, the court terminated jurisdiction with a family law order granting Father legal and physical custody of K.W.

On October 19, 2010, the juvenile court sustained a section 300 petition with respect to K.W. based on Mother's sexual abuse of K.W.'s sibling in 2002 and on Father's making inappropriate plans for K.W.'s care by placing her in the care of paternal grandmother, who abused illicit drugs and had a positive toxicology screen for cocaine in August 2010.

More specifically, in 2010, Father was incarcerated and left K.W. in the care of paternal grandmother. Paternal grandmother had a positive toxicology test for cocaine on August 18, 2010. Paternal grandmother claimed not to have used cocaine since the 1980's and blamed the positive test results on her medication and neighbors' sneaking into her house and putting drugs in her food. Paternal grandmother used cocaine in K.W.'s presence. While in paternal grandmother's care, K.W. was left unsupervised on several occasions. Then two-year-old K.W. had been found wandering in the neighborhood alone "in the month of June and July," very dirty, and wearing only a diaper. Additionally, paternal grandmother reportedly left K.W. alone in the house with a pit bull, called K.W. bad names, and spanked her "with a belt or anything she can get her hands on."

The juvenile court initially gave DCFS discretion at the September 3, 2010 detention hearing to permit Father to have K.W. placed "back" with paternal

grandmother. On October 19, 2010, the juvenile court ordered K.W. released to Father's care with the understanding that she was not to reside with paternal grandmother, but could reside with paternal aunt Debra J. Father was ordered to participate in individual counseling and parenting education. DCFS was ordered to arrange weekly random drug testing for paternal grandmother, whose visits were to be monitored. On April 12, 2011, the court determined that Father was in compliance with the case plan and terminated jurisdiction, releasing K.W. to Father.

In February 2012, the juvenile court sustained a section 300 petition with respect to George based on Mother's history of mental and emotional problems, the father of George's history of domestic violence, and Mother's 2002 sexual abuse of George's half sibling D.P.

Events leading up to the 2014 dependency petition

Father was arrested on June 26, 2013 for theft. He was sentenced to three years in prison on August 22, 2013.

On December 9, 2013, DCFS received a referral with respect to K.W. The reporting party stated that paternal grandmother said that K.W. had told paternal grandmother that she had been sexually abused by her teacher and another teacher at her teacher's house. Paternal grandmother took K.W. to the hospital and K.W. was referred to a rape treatment center for an assessment. The reporting party told DCFS that K.W. had been seen at the center on December 9, 2013, but K.W. denied any sexual abuse or that she had been to her teacher's house. The reporting party expressed concern for paternal grandmother's mental health and ability to care for K.W. and questioned whether paternal grandmother was telling the truth.

On December 12, 2013, K.W. told DCFS that no one had touched her vaginal area except for a doctor who had checked her. K.W. stated that her teacher touched her only on her shoulders, legs, and head, and that the entire class, as opposed to just herself, had gone to her teacher's house. Paternal grandmother told DCFS that K.W. told her that K.W.'s teacher had touched and licked her vaginal area and had taken K.W. to her house

to have sex with her and another teacher during class time. According to paternal grandmother, K.W. had told her that a classmate had shaved K.W.'s legs. When confronted with her positive drug test results in 2010 that led to K.W.'s removal from her home, paternal grandmother denied that K.W. had been detained from her care. She also denied current drug use or ever having been diagnosed with mental health issues. Paternal grandmother stated that she had tried cocaine "back in the 1970s."

A police report indicated that paternal grandmother brought K.W. to a hospital for an examination, which indicated no obvious visible signs of trauma. Instead of following police officers to a rape treatment center as she had agreed, paternal grandmother drove home and refused treatment for K.W. Paternal grandmother subsequently took K.W. to the Santa Monica Rape Treatment Center. A supervisor there reported to DCFS that paternal grandmother had been reluctant to take K.W. to the rape treatment center, was not able to provide information about the allegations of sexual abuse, made inconsistent statements, and seemed confused. Paternal grandmother appeared unable to care for K.W., who did not listen to her. K.W. denied having been sexually abused by her supervisor. An administrator at K.W.'s school told DCFS that paternal grandmother might have been upset at K.W.'s teacher, who had reported that K.W. had behavioral problems in class. Paternal grandmother had removed K.W. from the school in December 2013.

On January 2, 2014, DCFS received a referral for general neglect by paternal grandmother and sexual abuse by paternal uncle Ambrose L. The reporting person stated that paternal grandmother had told the reporter that K.W.'s vagina was "[s]wollen and flipped out." The same person suspected that K.W. was being sexually abused by Ambrose and that paternal grandmother was coaching K.W. to blame the sexual abuse on a teacher. On being interviewed by DCFS, paternal grandmother first denied that Ambrose visited the home, then stated that he stayed downstairs during visits and that K.W. was not permitted to be alone with him. Paternal grandmother said K.W. told her that her teacher eats her "poop" with a spoon in the classroom. Paternal grandmother

had placed a padlock on the outside of the front door, which then could not be opened from the inside. She claimed that people had been coming to her house and taking her food, but she had not reported the thefts to the police. An accompanying police officer told paternal grandmother to remove the padlock.

K.W. told DCFS that her friends in kindergarten and her teacher touched her vaginal area. She also said her teacher ate her “boo-boo” at her teacher’s house. K.W. said her uncle does not visit her, but that when she sees him, he hugs her. Later, K.W. reported that paternal grandmother sometimes left her home alone, ““but I know how to open the door.”” When left alone, K.W. took care of herself and answered the telephone. If a friend of paternal grandmother came to the door, she would tell the friend to ““stay and wait”” for paternal grandmother. If she did not know the person at the door, K.W. would not answer the door.

On January 3, 2014, Veronica S. reported to DCFS that paternal grandmother used drugs “a long time ago” and had abused Veronica S. as a child, but she “has left that behind.” Veronica S. had “minimal contact” with K.W. and paternal grandmother. Veronica S. believed paternal grandmother currently was not using drugs and that K.W. was safe in the care of paternal grandmother, who loved her. Veronica S. told DCFS that she would confirm whether paternal grandmother currently was using drugs by checking with friends and relatives. Later, Veronica S. called DCFS to report that friends and relatives told her that paternal grandmother was once again using drugs. Knowing that paternal grandmother, who had a long history of cocaine use, was abusing drugs again, Veronica S. was concerned for K.W.’s safety in the care of paternal grandmother. Ambrose told DCFS that he had minimal contact with paternal grandmother and K.W. Before Father went to jail, Ambrose told him that paternal grandmother could not take care of K.W.

Paternal grandmother tested negative for drugs on January 6, 2014, and February 10, 2014. She told DCFS that since she had removed the padlock from the front door, people had been coming into her home, tampering with her food, and taking her

water bottles. She had not called law enforcement. As a result, DCFS recommended a mental health evaluation to address delusions.

A police detective reported to DCFS that K.W. had not disclosed sexual abuse to the officers and that her medical exam was normal. According to the detective, K.W.'s classmates denied going to the teacher's home.

DCFS filed the initial petition on February 21, 2014. At the detention hearing that same day, the juvenile court ordered K.W. detained from paternal grandmother's care and restricted paternal grandmother to monitored visits. Paternal grandmother's section 388 petition seeking return of K.W. to her care was denied on April 10, 2014 without a hearing. DCFS filed the first amended petition on May 5, 2014.

Reports subsequent to the filing of the first amended petition

DCFS reported the following. On April 23, 2014, Father e-mailed DCFS stating he wanted K.W. placed with either paternal grandmother or paternal great-aunt L.P. DCFS's attempts to contact paternal grandmother were not successful and no contact had been made as of May 7, 2014.

According to a May 7, 2014 pre-release investigation report, 76-year-old L.P. stated that she was willing and able to care for K.W. L.P. said that she had been a foster parent for many years and resided with her adult daughter and two adopted boys, who were 17 and 14 years old. DCFS observed that L.P.'s house was clean and neat.

DCFS identified concerns in the placement of K.W. with L.P., which resulted in a negative recommendation. L.P. kept a pit bull in the backyard for protection. L.P. stored a gun and ammunition in a locked suitcase, which had not yet been moved out of a child's reach. DCFS was unable to assess a bedroom because L.P. refused to allow DCFS to inspect her adult daughter's room. L.P. explained that she would sleep on the living room floor to allow K.W. to use her own bedroom. L.P.'s daughter and other adult children would be required to pass a Live Scan review. Because L.P. had been convicted of forgery, in order for K.W. to be placed with her, L.P. would also be required to obtain a criminal exemption waiver, which she had not obtained at the time of the jurisdictional

hearing. On May 2, 2014, DCFS had delivered paperwork to L.P. to initiate a request for the criminal record exemption.

The pre-release investigation report recommended against placing K.W. with paternal grandmother based on the substantiated referrals against her for general neglect and removal of K.W. from her care in 2010 and 2014; paternal grandmother's denial of using drugs despite a positive toxicology result in 2010; paternal grandmother's failure to provide proof of drug rehabilitation services; paternal grandmother's need for random drug tests; the lack of smoke detectors in the bedrooms; the need for paternal grandmother's four adult children to pass a Live Scan review; and DCFS's recommendation that paternal grandmother submit to a mental health evaluation in view of her statements that people had been coming into her home and tampering with her water bottles and food after she removed the padlock from her front door.

On June 10, 2014, a relative information sheet was filed listing Veronica S. as a potential relative placement for K.W. While Veronica S.'s home was appropriate with respect to child safety, her fiancé required a criminal exemption waiver, which was being reviewed as of June 23, 2014.

The jurisdictional and dispositional hearing

At the time of the June 23, 2014 jurisdictional hearing, Mother and Father were incarcerated but present in custody represented by their respective counsel. With respect to K.W., DCFS argued that the section 300 petition should be sustained as against Father. DCFS contended that Father had made an inappropriate plan because a petition previously had been sustained based on paternal grandmother's drug use. DCFS argued that even though the juvenile court did not restate the orders requiring Father not to place K.W. with paternal grandmother when it "closed out" the 2010 dependency matter in April 2011, "courts often do not restate everything that forms the history of the case." DCFS further asserted that paternal grandmother showed a lack of candor about her relapse in using drugs, then cocaine, in 2010.

Father's counsel urged that the allegations against Father be dismissed because he had identified two suitable placements for K.W., paternal grandmother and L.P. Father's counsel argued that paternal grandmother's two on-demand tests had been negative, no condition had been placed upon the home of Father order in 2010, and any placement concerns with paternal grandmother or L.P. could be remedied. K.W.'s counsel stated that he believed if given the opportunity, Father could and would make an appropriate plan for K.W. and that the problems with L.P. "were remediable." K.W.'s counsel also acknowledged that K.W. had "extremely bonded" with paternal grandmother. K.W.'s counsel, however, did not believe that Father acted appropriately in placing K.W. with paternal grandmother when it had been found true that she had abused drugs in the past and a petition had previously been sustained based on Father's placement of K.W. with her.

The juvenile court sustained the allegations of the amended petition under section 300, subdivision (b) against Father. The court determined that even though jurisdiction had been terminated in the previous dependency case, under the facts of the present case, Father had not made an appropriate plan for K.W. in allowing her to stay with paternal grandmother. The court observed that Father had been present at the hearing in 2010 when he was ordered not to place K.W. with paternal grandmother. Father also was aware of paternal grandmother's "situation" and of the 2010 sustained petition, yet he still decided to place K.W. with paternal grandmother in 2013. The court did not believe that "the facts would have changed whether or not it was now or a month after" jurisdiction was terminated over the 2010 case. Further, the court observed that even though paternal grandmother recently may have tested negative, "there's no information with regards to the condition or her testing or her present situation between that time. But what is clear from the record is that this was an issue," yet Father still chose to place K.W. in her care.

At the July 24, 2014 dispositional hearing, Father's counsel requested that K.W. be returned to Father's custody because he had made two appropriate plans for K.W.'s

care, to wit, placement with paternal grandmother and placement with L.P. Father's counsel argued that any problems with L.P. as a caregiver for K.W., including the pit bull, unsecured gun, and need to convert the living room into a bedroom, could be remedied. Father's counsel also relayed Father's objection to K.W.'s placement with Veronica S., who had previously obtained legal guardianship over his other child.

DCFS argued that because a petition had been sustained against Father, "his ability to make plans are out the window now" because Father, having become incarcerated again, placed K.W. in the care of the same person—paternal grandmother—whom the juvenile court had found was not an appropriate placement when Father was incarcerated in the past. DCFS requested the juvenile court to make removal findings and allow DCFS to continue assessment of the other proposed placements for K.W.

Counsel for K.W. argued that in evaluating the suitability of paternal grandmother and L.P., the juvenile court had to consider the criteria of section 361.3 (regarding placement with a relative), which include, among other factors, the relative's moral fitness, the safety of the relative's home, and the relative's ability to facilitate court-ordered reunification efforts with the parents and provide legal permanence if reunification efforts fail. (§ 361.3, subd. (a)(7)(A), (E), (G)–(H) & (8).) Counsel for K.W. argued that paternal grandmother was not suitable, stating she had "many issues and a long history with this and our neighboring courts" and that in counsel's opinion, "she's a non-issue."

Counsel for K.W. also expressed concern regarding L.P.'s home, including the unsecured gun and pit bull. K.W.'s counsel informed the court that Father's release date would be in February 2015, and that this date was "well within the statutory time frame for reunification." K.W.'s counsel joined with DCFS in arguing that Father needed time to work on getting K.W. back in his custody and requested the court to order K.W. suitably placed and that DCFS continue to work on placement with Veronica S.

Stating that it had considered the evidence, DCFS's reports, and the sustained petition, the juvenile court declared K.W. a dependent of the court and determined by

clear and convincing evidence pursuant to section 361, subdivision (c) that there was a substantial danger if K.W. were returned to Father's custody. The court adopted the argument of K.W.'s counsel "with regards to 361.3," observing that "there is a sustained petition against [Father, who demonstrated] a grave lack of insight with regards to the placement of [K.W.] knowing that the paternal grandmother was not an appropriate caregiver at the time." The court also found that "assessment for any appropriate relative is in order[.]"

The juvenile court ordered DCFS to "continue efforts to place [K.W.] with Veronica S[.]" and to "set up visitation between Veronica S[.] and [K.W.]." The court further ordered family reunification services, parenting, and individual counseling, monitored visitation with Father subject to the rules of the place of incarceration, and discretion to DCFS to liberalize visitation. The court also ordered DCFS to "set up a telephonic contact schedule between [K.W.] and her father."

Father's request for judicial notice

On May 11, 2015, Father requested that we take judicial notice of the juvenile court's April 28, 2015 minute order in which the court (1) ordered that K.W. be placed in the home of Father under supervision of DCFS; (2) gave paternal grandmother monitored visitation with a direction "TO LIBERALIZE TO UNMONITORED" visitation; (3) found that father "is in compliance with the case plan"; and (4) further found that "[t]he permanent plan of return to home of Father is appropriate and is ordered as the permanent plan." On May 29, 2015, we took judicial notice of the juvenile court's April 28, 2015 minute order, but only as to the issue of whether the instant appeal is moot. On the same day, we requested letter briefs addressed to this issue under Government Code section 68081. We received the parties' timely responses.

DISCUSSION

Father's dispositional challenge is moot in light of placement back in Father's care but we exercise our discretion to review the juvenile court's jurisdictional findings

On April 28, 2015, the juvenile court ordered K.W. returned to Father's care and ordered that disposition "as the permanent plan." Were we to reverse the dispositional order removing K.W. from Father's care at issue on appeal, we thus could not order any relief that has not already been granted by the juvenile court's April 28, 2015 order. Accordingly, that portion of Father's appeal attacking the juvenile court's dispositional order is moot.

Whether Father's appeal is moot as to the juvenile court's jurisdictional findings is a close question. We are mindful of the jurisprudence that allows appeals of seemingly moot attacks on jurisdictional findings if those findings could negatively affect the appellant in future dependency proceedings. Father asserts that the jurisdictional finding that he failed to protect K.W. by placing her in paternal grandmother's care could have a negative impact on him in the future.

History of that same conduct, however, was already in Father's dependency file because of the 2010 referral removing K.W. from his care when he previously placed her in paternal grandmother's care. Any further "demerit" based on the same jurisdictional outcome would appear to be minimal. We nonetheless exercise our discretion to review the juvenile court's jurisdictional finding on the merits.

Substantial evidence supported the juvenile court's jurisdictional findings

Standard of review

The juvenile court's jurisdictional finding that the minor is a person described in section 300 must be supported by a preponderance of the evidence. (§ 355; Cal. Rules of Court, rule 5.684(f).) "“When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all

conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.]” [Citation.] While substantial evidence may consist of inferences, such inferences must rest on the evidence; inferences that are the result of speculation or conjecture cannot support a finding. [Citation.]” (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1258–1259.) “[W]e must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.)

Leaving K.W. with paternal grandmother was not an appropriate plan

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse. . . . The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.”

“A jurisdictional finding under section 300, subdivision (b) requires:

“(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the child, or a ‘substantial risk’ of such harm or illness.” [Citation.] [Citations.] The third element ‘effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur).’ [Citation.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) “[T]he use of the disjunctive ‘or’ demonstrates that a showing of prior abuse and harm is sufficient, standing alone, to establish dependency jurisdiction.” (*In re J.K.* (2009) 174 Cal.App.4th

1426, 1435, fn. omitted.) Thus, jurisdiction may be exercised “either based on a prior incident of harm or a current or future risk.” (*Id.* at p. 1435, fn. 5.)

As amended and sustained, the first amended petition alleged in paragraph b-1 that Father was incarcerated and made an inappropriate plan for K.W.’s care by placing her with paternal grandmother who Father knew abused illicit drugs. It also alleged that K.W. was a prior dependent of the juvenile court based on Father’s making an inappropriate plan for K.W.’s care by placing her with paternal grandmother.

Viewing all conflicts in favor of the juvenile court’s jurisdictional findings, and drawing all reasonable inferences in support of the judgment, as we must (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185), we conclude that substantial evidence supported the juvenile court’s jurisdictional findings.

It is true that paternal grandmother tested negative in two early 2014 drug tests. There was other evidence in the record, however, to support the trial court’s finding that placement with paternal grandmother put K.W. at risk of physical harm. Veronica S. reported that friends and relatives said paternal grandmother was using drugs. In 2010, paternal grandmother had tested positive for cocaine and had used it in K.W.’s presence. In 2010, paternal grandmother had left K.W. unsupervised on several occasions. Then two-year-old K.W. had been found wandering in the neighborhood alone “in the month of June and July,” very dirty, and wearing only a diaper. Additionally, paternal grandmother reportedly left K.W. alone in the house with a pit bull, called K.W. bad names, and spanked her “with a belt or anything she can get her hands on.” Thus, in October 2010, the juvenile court determined K.W. was at substantial risk of harm because Father had made an inappropriate plan for her by leaving her in the care of paternal grandmother, who used illicit drugs.

During the pendency of the 2010 matter, K.W. had been released to Father’s care with the proviso that K.W. not be permitted to reside with paternal grandmother. Paternal grandmother was required to drug test and have monitored visits. Despite this history, Father once again placed K.W. in paternal grandmother’s care when he was

incarcerated in 2013, even though he was fully aware of paternal grandmother's inadequacy as a caregiver for K.W. and of the juvenile court's previous orders and findings in the sustained 2010 dependency matter.

The juvenile court could also have reasonably concluded that by leaving K.W. in the care of paternal grandmother in 2013, Father caused a substantial risk of harm to then five-year-old K.W. similar to the risk to which he exposed her in 2010. K.W. reported that paternal grandmother left her home alone. At these times, K.W. was left to take care of herself, including answering the telephone and responding to persons who came to the residence. If a friend of paternal grandmother came to the door, K.W. would tell the friend to stay and wait for paternal grandmother. If she did not know the person at the door, K.W. would not answer the door. It is unclear whether K.W. opened the door for paternal grandmother's friends, although she stated she knew how to open the door. The dangers to a five-year old child left unattended under these circumstances certainly would have been apparent to the juvenile court.

Further, police, relatives, and the supervisor at the rape treatment center expressed concern that paternal grandmother was unable to care for K.W. The police and the rape treatment center supervisor reported that paternal grandmother was confused and made inconsistent allegations regarding sexual abuse of K.W. by K.W.'s teacher. K.W. initially denied visiting her teacher's house and denied sexual abuse; her medical exam was not consistent with paternal grandmother's report of sexual abuse. Although K.W. subsequently claimed her friends and her teacher had touched her on her vagina and that her teacher ate her "boo-boo," one reporter believed paternal grandmother had been coaching K.W. to blame her teacher for sexual abuse.

Additionally, paternal grandmother exhibited bad judgment by installing a padlock on the front door so that the door could not be opened from the inside, even when she left K.W. alone in the home. Paternal grandmother's claim that people had come into her house, tampering with her water bottles and food, prompted DCFS to recommend a mental health evaluation to address delusions.

We conclude that the juvenile court's jurisdictional findings were supported by paternal grandmother's long history of drug use; her relatively recent positive drug test in 2010; the sustained 2010 petition based on Father's making an inappropriate plan for K.W. by placing her in paternal grandmother's care; statements by friends and relatives that paternal grandmother was again using drugs; paternal grandmother's suspect statements regarding sexual abuse of K.W.; concerns by the rape treatment center staff, relatives, and police that paternal grandmother was unable to care for K.W. properly; and evidence that paternal grandmother had left K.W. home alone, sometimes with a padlocked door.

Father's request to place K.W. in L.P.'s care does not negate jurisdiction under section 300, subdivision (b)

Father contends that no valid basis for jurisdiction existed at the time of the jurisdictional hearing because he was able to arrange alternate suitable care for K.W. with L.P.

We first observe that this appeal is not about an incarcerated parent's inability to arrange for the care of a minor. Section 300, subdivision (g) provides, in pertinent part, grounds for jurisdiction where a parent has been incarcerated and cannot arrange for the care of the child. The amended petition was based on section 300, subdivision (b), specifically Father's placement of K.W. with paternal grandmother putting her at risk of serious harm.⁶ Father left K.W. in paternal grandmother's care when he was incarcerated in 2013, even though he was fully aware of both paternal grandmother's inadequacy as a caregiver for K.W. and the juvenile court's previous orders and findings in the 2010

⁶ Father argues that "the provisions of section 300, subdivision (g) must be considered given parental incarceration alone is not a basis for dependency jurisdiction, and [Father] is able to arrange for [K.W.'s] care during his incarceration." DCFS did not plead in the amended petition, nor did the juvenile court sustain allegations under section 300, subdivision (g), and, therefore, Father cannot show on appeal that the juvenile court erred with respect to sustaining an allegation that was not pleaded.

dependency case. As set forth *ante*, by leaving K.W. with paternal grandmother, Father exposed K.W. to risk of serious physical harm.

Second, Father's case authorities do not assist his cause. In support of his assertion that he was able to provide alternative suitable care for K.W. with L.P. he cites our reversal of jurisdictional findings under section 300, subdivisions (b) and (g) in *Maggie S. v. Superior Court* (2013) 220 Cal.App.4th 662 (*Maggie S.*). There, our decision was based in large part on DCFS's not informing the juvenile court about the mother's written designation of the minor's godmother as a caregiver for the minor prior to the minor's birth while the mother was incarcerated. (*Id.* at p. 672.) DCFS had also not informed the court that the godmother had told DCFS almost two months before the jurisdictional hearing that she was willing to care for the minor. (*Ibid.*) We held that "[t]his misinformation led the [juvenile] court to believe Mother had not arranged for [the minor's] placement with a willing caregiver, resulting in a finding of jurisdiction that set in motion a chain of events that resulted in the termination of Mother's parental rights." (*Ibid.*)⁷

In contrast, placement with L.P. was not the subject of the section 300, subdivision (b) petition and Father did not designate L.P. as a caregiver until after K.W. was removed from paternal grandmother's care. In addition, although L.P. had adopted children and claimed to be an experienced foster parent, DCFS identified concerns in placing K.W. with L.P., which resulted in a negative recommendation. L.P. kept a pit bull in the backyard, not as a pet, but for protection, and at the time of the jurisdictional hearing, L.P. had not shown that she had stored her gun and ammunition out of a minor's reach. Further, DCFS had not been able to inspect L.P.'s adult daughter's room and

⁷ Furthermore, as to jurisdiction asserted under section 300, subdivision (b), we concluded that the fact that the godmother had a foster care license but lost it at some unspecified time, and that her subsequent application had been rejected at an unspecified time because she did not release her medical records, was not evidence of a substantial risk of physical harm to the minor. (*Maggie S.*, *supra*, 220 Cal.App.4th at p. 673.) "Mother had arranged for care of [the minor] at the time of the jurisdiction/disposition hearing, and so there was no basis for jurisdiction." (*Ibid.*)

L.P.'s daughter and other adult children had still to pass a Live Scan review. There was no bedroom for K.W. without L.P.'s sleeping on the living room floor. L.P. also had been convicted of forgery and was therefore required to have a criminal exemption waiver in order for K.W. to be placed with her, which exemption she had not obtained at the time of the jurisdictional hearing.

In re Noe F. (2013) 213 Cal.App.4th 358 is of no avail either. In that case, the mother had identified suitable placements for the minor, and the minor was eventually placed with one of the relatives the mother had identified. (*Id.* at p. 365.) We held that "Mother had identified two suitable placements for Noe: Noe's maternal grandmother and paternal grandmother. The allegations against maternal grandmother based upon the death of a child were deemed unfounded; after initially expressing her inability to care for Noe, paternal grandmother agreed that she could care for Noe. As a result, there was no basis to assert jurisdiction over Noe based upon Mother's care choices." (*Id.* at p. 366.)

In contrast, here, at the time of the jurisdictional hearing K.W. had been removed from paternal grandmother's care and L.P.'s suitability was still being assessed against DCFS's significant concerns about L.P. and her home as a safe environment for K.W. In addition, as DCFS argues, if jurisdiction had not been asserted over K.W., Father could have transferred care of K.W. from L.P. back to paternal grandmother at any time, just as he had done in the past. Accordingly, we conclude that Father's request to place K.W. in L.P.'s care provides no occasion to reverse the juvenile court's exercise of jurisdiction under section 300, subdivision (b).

It is not necessary to address Father's assertion of standing to challenge the juvenile court's findings against Mother because the court properly found jurisdiction as against Father

Father contends that he has standing to contest the jurisdictional findings against Mother, who did not appeal, and argues that there was no nexus between Mother's abuse and neglect of K.W.'s half siblings and any substantial risk of abuse or neglect to K.W.

Because the juvenile court may take jurisdiction over a minor if any one count as to either parent is sustained, we decline to address Father's arguments with respect to the findings against Mother. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.)

DISPOSITION

The juvenile court's jurisdictional order is affirmed. Father's appeal as to the juvenile court's dispositional order is dismissed as moot.

NOT TO BE PUBLISHED.

BENDIX, J.*

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.